

APPEAL BOARD

Directive: 8.8

Once a substantiated complaint reaches the appeal stage, the Internal Affairs Division will marshal facts and arguments in support of the Department's decision.

- A.** A departmental Appeal Board will be comprised of the following personnel:
 - 1. The Chief of Police, or his designated representative.
 - 2. The Personnel Director of the City of Wilmington, or a designated representative.
 - 3. A member of Lodge #1 of the Fraternal Order of Police, who is not directly connected with the prior Complaint Hearing Board procedure.
 - 4. In the event that the Chief of Police initiates an appeal, the Director of Public Safety or his designated representative shall sit on the Appeal Board in place of the Chief.

- B.** A written appeal of a departmental Complaint Hearing Board must be made within five (5) working days of the Complaint Hearing Board decision. Appeal must be based on one (1) or more of the following criteria, giving specifics of each point of the appeal:
 - 1. The defendant believes that he was unjustly accused in that the charges lack merit or were brought without just cause.
 - 2. The defendant believes that the penalty given was unjustly harsh, given the attending circumstances.
 - 3. The defendant believes that all evidence was not available to him at the time of the original Complaint Hearing Board, or was denied entry by the Complaint Hearing Board.
 - 4. The decision of Trial Board is not supported by the evidence and record.
 - 5. All Appeals must clearly indicate the specific area(s) to be reviewed, and why the defendant is entitled to relief.

- C. The Captain of the Internal Affairs Division and/or the Chief of Police, within five (5) days of receipt of the Complaint Hearing Board's decision and recommendation, may convene an Appeal Board to consider the following:
1. Whether the Complaint Hearing Board was not carried out in a manner fair to both employee and to the Internal Affairs Division prosecuting the case; or
 2. Whether the decision of the Complaint Hearing Board was not supported by the evidence; or
 3. Whether the punishment imposed was too lenient or too harsh in view of the character of the offense. Should the Captain of the Internal Affairs Division and/or the Chief of Police decide to convene on the Appeal Board, he shall state the reasoning behind his decision in writing. A copy of this decision shall be sent to the employee.
 4. Should the Captain of the Internal Affairs Division and/or the Chief of Police call for the convening of the Appeal Board, the employee shall be notified in writing and be given the opportunity to request within five (5) days whether he wishes to be present, have an attorney, and/or present testimony and evidence before the Appeal Board or just make written submissions.
- D. The action that the three (3) member Appeal Board assumes is that of an administrative review of the case. The appeal shall be on the record and shall not constitute a full hearing of the facts of the case, addressing only the specifics of the appeal. The Administrative Review can, but shall not be required to perform the following:
1. Review of those portions of the taped transcript designated by the original Complaint Hearing Board, in regard to the specifics of the appeal.
 2. Interviewing witnesses, in regard to the specifics of the appeal.
 3. Interviewing the accused (with legal counsel if the accused so desires).
 4. Reviewing all pertinent information or evidence previously introduced.
 5. Reviewing new evidence not available at the complaint Hearing Board, but sought by the accused to be entered on his behalf, or evidence excluded by the original Complaint Hearing Board. Where the

Appeal Board finds such evidence to be pertinent to the case, or previously denied evidence was denied for insufficient reason, it shall take the appropriate action. Such action shall include but not be limited to the following:

- a. Modifying the decision of the Trial Board such that the results reflect the consideration of the new evidence, within the classification of punishment system.
 - b. Remand the case back to the Trial Board for reconsideration of the additional evidence.
 - c. Determine if the additional evidence would not have effected the Trial Board decision; and, where it so finds, affirm the decision of the Trial Board.
- E. The findings of the Appeal Board will be the final authority within the Department relative to disciplinary action.
- F. All findings of the Appeal Board, will be published as a supplement to the memorandum assigned to the Complaint Hearing Board, and will be signed by the Chief of Police.